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April 27, 2016

Matthew T. Wood
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Re: Brendan McKown

Dear Mr. Wood:

This report presents findings from an independent psychological evaluation of Mr. Brendan McKown. This assessor has no past or ongoing relationship with Mr. McKown and is not acting in the capacity of a treating professional. Mr. McKown was informed at the time of the evaluation that all materials and findings resulting from the assessment were not confidential and could be presented to the retaining party. Further, this report may contain psychological findings that could be misunderstood or misconstrued by Mr. McKown. If Mr. McKown is provided with a copy of this report, it is recommended that he consult with a professional who can explain the data and conclusions.

Mr. McKown was interviewed on April 5, 2016, for approximately five hours, and on April 7, 2016, for two-and-a-quarter hours. A digital audio recording of the interviews was made with Mr. McKown's knowledge and consent. In addition to time spent during the interviews, Mr. McKown completed psychological testing that included the Minnesota Multiphasic Personality Inventory (MMPI-2), Quality of Life Scale (QOLS), Beck Depression Inventory (BDI-II), Beck Anxiety Inventory (BAI), PTSD symptom checklists reflecting criteria from the DSM-IV and DSM-5 (PCL-C; PCL-5), and the Adult ADHD Self-Report Scale (ASRS).

A set of records was reviewed as part of the present assessment. These materials included medical records from Mr. McKown's primary care physician, Dr. Brendon Hutchinson; records from psychologists Dr. Jerry Devore and Dr. Frederick Silver: report of a neuropsychological evaluation by Dr. Frederick Wise; deposition transcripts of Mr. McKown and Dr. Hutchinson; and an Amended Complaint for Damages.

Findings and opinions presented in this report are based on the above sources of data, and relevant findings from clinical psychology and related health disciplines.

A. General issues pertaining to the assessment of Mr. McKown can be considered before specific findings are addressed:

1. All people hold beliefs about their problems in life. An individual's stated "belief model" may or may not be in agreement with other sources of data. Further, what an individual publicly represents to be his or her belief may differ from what the person "privately" believes.[1] Inaccuracies and distortions in beliefs, memories, and reporting may reflect normal information processing and biasing effects; cognitive and perceptual distortions that result from personality or other psychiatric issues; and/or the influence of situational factors that can include issues of secondary gain.

2. American psychiatry's system for classifying psychiatric disorders is provided in the Diagnostic and Statistical Manual (DSM-IV-TR, 2000; DSM-5, 2013).

3. Emotional reactions to stressful life events, traumatic accidents, and/or health problems may not require a psychiatric diagnosis. "Negative" feelings of anxiety, vulnerability, frustration and anger, often constitute normal reactions appropriate to a person's situational context and adjustment issues. Normal reactions to stressful events should not be confused with pathological responses, and should not be assigned a psychiatric diagnosis.[2]

4. The majority of individuals who experience a single incident civilian trauma, apart from sexual assault, do not have reactions of sufficient severity and breadth to meet criteria for a diagnosis of posttraumatic stress disorder (PTSD). Further, the normal course of posttraumatic reactions is characterized by rapid onset followed by improvement over time, such that 50% of individuals diagnosed with PTSD no longer meet criteria after the first three months post-incident.[3]

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[1] See, A.A. Stone, J. S. Turkkan, C.A. Bachrach, J.B. Jobe, H.S. Kurtzman, and V.S. Cain (Eds., 2000), *The Science of Self-Report,* Mahwah, N.J.: Lawrence Erlbaum Associates.

[2] See A.V. Horwitz & J.C. Wakefield (2007), *The loss of sadness: How psychiatry transformed normal sorrow into depressive disorder*. Oxford: Oxford University Press. Also, J.C. Wakefield & A.V. Horwitz (2010), *Normal reactions to adversity or symptoms of disorder?* In G.M. Rosen & B.C. Frueh (ed.), Clinician's Guide to Posttraumatic Stress Disorder. Hoboken, N.J.: John Wiley & Sons.

[3] With regard to onset of symptoms, see C.S. North et al. (1999), *Psychiatric disorders among survivors of the Oklahoma City Bombing*, Journal of the American Medical Association (JAMA), 282, 755-762: "Onset of PTSD was acute. Of 62 subjects with bombing-related PTSD, 47 (76%) reported immediate (same day) onset, another 11 (94% cumulative) in the first week, 3 more by the end of the first month (98% cumulative), and only 1 more between 1 and 6 months." With regard to the course of symptoms, text in DSM-5 states (p. 277): "Duration of the symptoms also varies, with complete recovery within 3 months occurring in approximately one-half of adults." In a review of the literature, Yehuda and McFarlane concluded: "...the available epidemiological data show that PTSD, and certainly chronic PTSD, is more unusual than usual following exposure to a variety of traumatic events." R. Yehuda and A.C. McFarlane (1995), *Conflict between current knowledge about posttraumatic stress disorder and its original conceptual basis,*" American Journal of Psychiatry, 152, 1705-1713.

B. Findings presented in this section were among those obtained from a review of records.

1. On January 2, 2009, an Amended Complaint for Damages was filed on behalf of Mr. McKown:

> This claim is based on the injuries suffered by Plaintiff Brendan McKown, who was shot by Dominick Sergio Maldonado while he was at the Tacoma Mall... The acts and/or omissions of Defendants Simon Property Group and IPC International constitute negligence, including but not limited to negligent hiring, supervision, and retention of security personnel at the Tacoma Mall; the negligent response to the mall shooting; and failure to install proper devices to monitor individuals on the mall premises, proper security cameras, and other devices. As a direct, proximate, and foreseeable cause of Defendants' failure to provide adequate security to prevent criminal and tortious activity and prevent Plaintiff from being attacked and injured, Plaintiff sustained serious and permanently disabling injuries, as well as general and special damages, the full extent of these injuries to be proven at trial.

2. Medical records provided by Dr. Hutchinson, at St. Joseph Medical Clinic, including chart notes from other facilities, were reviewed. For purposes of the present review, excerpts from these records focus on references to psychiatric and/or emotional concerns. Also included in this section are records provided by two psychologists with whom Mr. McKown consulted: Drs. DeVore and Silver. Physician notes addressing only medical complaints are not included in the review:[4]

> *November 29, 2005: Good Samaritan*
> The patient is a 38-year-old male with L4-5 cauda equina spinal cord injury with multiple gunshot wounds, transferred from MultiCare for inpatient rehab... Date of injury November 20, 2005... The patient had some visual hallucinations and confusion on morphine and seems to be a little confused on Percocet and Dilaudid. He is transferred to start the spinal cord injury rehab process... He will undergo intensive spinal cord injury rehab program and we will mobilize. He is on spine precautions. He will have physical therapy, occupational therapy, psychology with peer support counseling, and spinal cord injury educations classes. Therapeutic recreation, rehabilitation nursing, social work and care coordination... His case has been discussed with Good Samaritan Hospital Media Relations manager, Susan Messier, who also met with the patient today. This pertains to the patient's multiple interviews and press calls to date. He would like to continue to talk to the press if able.
>
> *December 1, 2005: Good Samaritan, Dr. DeVore*
> Psychologist's Assessment: Brendan McKown who prefers to be called Dan is a 38 year old male admitted to inpatient care at GSH Rehabilitation Center on 11/29/05 for rehabilitation following multiple gunshot wounds resulting in spinal cord injury and a number of medical problems... Socially, the patient works as an assistant manager at a cutlery store in the mall where he was shot and was at work at the time of the shooting. He is single and never married. He has a number of creative interests including performing as a comedian and creative writing. He has a large circle of friends and he feels significantly enriched by his Christian faith. He reported that he had a lot of traumatic injuries in Junior High School... Formal assessment of cognitive functioning was not undertaken at this time. He denied any nightmares or flashbacks about the injury and its circumstances. He is focusing on all the good that came from this situation including connection with friends and well-wishing from

[4] A limited number of records pertaining to health care received by Mr. McKown prior to the Tacoma Mall shooting were available to review. A more complete set of records likely would further an analysis of Mr. McKown's health history.

strangers. Currently the worst of his situation is is ostomy bag and the process of changing and caring for it. He reports that he is squeamish and becomes dizzy and faint when he has to think about it or other aspects of wound care or bodily functioning... There was no evidence of depressed mood, loss of pleasure or interest... Diagnostic Impression: Adjustment disorder, unspecified; Cognitive disorder NOS...[5] The patient refused to consider desensitization procedures that might help him become more capable of caring for his wounds, his ostomy or his bowel and bladder functions. He felt that it was reasonable and appropriate for others to attend to those aspects of his functioning. In terms of stages of change, he appears to be in the denial or pre-contemplate stage of change. Currently he does not see a need for psychological help... I will recheck periodically to build rapport and assess readiness for further psychological intervention.

January 3, 2006: Dr. DeVore
Patient distraught about the arrangements for an overnight pass that might involve imposing on friends to break the Sabbath as he understands it. He reported that while he is distressed with self-cathing, he has learned to do and is now cathing himself... He was pleased to show me his portfolio of photography and graphic art projects. His work suggests significant skill and capability in those areas... Staff will succeed best by focusing on the task that needs to be accomplished and compromising with the patient so that he feels that he is making some choices about how it gets accomplished.

January 9, 2006: Dr. DeVore
He reported that he is mostly moved into his new apartment with the help of a number of his friends... "Increased independence" is unlikely to be a motivator for this patient. Therapists will be prudent to pay particular attention to what does motivate him if they wish to solicit his cooperation. Feeling respected and willingness to cooperate appear to be qualities associated with him learning more about self-care.

January 11, 2006: Dr. DeVore
He had not listened to or worked with relaxation procedure because he was more involved with his friends...The plan is for discharge at the end of the week. I will follow for outpatient care as long as I am authorized. Many of his defenses will be challenged when he is not in the limelight and must rely more on his own resources for coping.

February 17, 2006: Rainier Rehabilitation Associates
He has been attending outpatient physical therapy at Good Samaritan Hospital, as well as seeing Becky Overland, RN, in the Rehab Nursing Clinic for wound care and follow-up ostomy training. He has also been seeing Dr. DeVore for psychology concerns... The team's concerns were that Dan has asked for too much assistance and does not recognize social boundaries. He also is resistant when asked to do some things and lacks organization and planning...Dan reported a diagnosis of Attention Deficit Disorder per his mother and did have a childhood seizure disorder... Dr. DeVore will be leaving Good Samaritan Hospital on 2/28/06 for a different position, so it is recommended that Dan follow-up with a psychologist elsewhere. I recommend Dr. Fred Silver at St. Joseph Hospital, due to his expertise in pain management

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[5] In 2006, DSM-IV-TR was in effect when determining the presence of symptom criteria and psychiatric disorder. Text in DSM-IV-TR provided this discussion for the diagnosis (p. 681-682): "Adjustment Disorder is a residual category used to describe presentations that are a response to an identifiable stressor and that do not meet the criteria for another specific Axis I disorder." Specific criteria for the diagnosis required: "Marked distress that is in excess of what would be expected from exposure to the stressor," or "Significant impairment in social or occupational (academic) functioning." In providing the diagnosis of Adjustment Disorder, Dr. DeVore did not clarify what reactions had been reported by Mr. McKown to meet DSM's criteria, as opposed to expected adjustment issues that individuals face when dealing with functional losses and disability.

and adjustment to disability... The therapy team has also been concerned that Dan has been losing weight... He does appear somewhat thinner than when he was an inpatient. He has a fixed false belief that he has severe hypoglycemia, which he needs to self-medicate with Reese's Pieces. The inpatient dietician had little luck in convincing him to eat a proper nutritious diet... He has premorbid personality traits that are challenging when therapists are trying to get him to focus on the task at hand... I do not feel this requires a trial of Ritalin. He denies depression.

February 27, 2006: Dr. Hutchinson
The patient has a history of erectile dysfunction secondary to his spinal cord injury. He would be interested in trying a course of Viagra to see if this was helpful.

March 20, 2006: Rainier Rehabilitation Associates
He has weaned off the walker, and is ambulating with axillary crutches. He is still resistant to the idea of Lofstrand crutches. He states he thinks this is somewhat psychologic, as he feels they are more permanent, and axillary crutches look more temporary. His ultimate goal is to get to ambulate with a single-point cane.

March 31, 2006: Dr. Hutchinson
He is happy to report that he seems to have gained additional function to his left lower extremity... Additionally, considerations would be to place him on Cymbalta as Cymbalta has some pain modulating effects and I think it would help him to have an antidepressant on board although he is somewhat resistant to this idea. IU have also discussed with Dan that he may actually benefit from having a low dose of Ritalin or Adderall because he tends to have difficulty staying on task and certainly ADD/ADHD is something that I think Dan has probably struggled with chronically all his life, but again he is somewhat resistant to the idea of being on psychotropic medications.

May 8, 2006: MultiCare Pain Management
Therapy for depression: no change in current therapy is indicated... Antidepressant Cymbalta 60 mg/day... Current medications for pain control: He reports an 80% pain reduction... Psychiatric: no signs or symptoms.

June 16, 2006: Dr. Hutchinson
The patient describes having significant depressed mood.[6] He notes that he has come to the realization that he may not necessarily walk again although, interestingly, apparently he is having increased sensations to his legs... He is still quite immobile, though; he has no muscular strength... Depressive disorder: I have recommended to Dan that he get on some type of antidepressant but he is highly resistant to the idea. Previously I had him on some samples of Cymbalta through the office here for his radicular pain. He did not feel that that was especially helpful, so he discontinued it when the sample ran out. He did note that he had a surge of depressive feelings when he came off the medication. He is quite concerned about being on long-term antidepressives to control his mood, so he would like to go without for a while. The patient has more than ample reason to feel depressed because of his current physical disability, and I have recommended to him that we continue this but I will allow him to stay off of it for now and see how this pans out.

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[6] This record is the first to document reports of significant depressed mood, although in a prior visit to Dr. Hutchinson on March 31, 2006, a prescription for Cymbalta was considered for "pain modulating effects" and to "have an antidepressant on board." Prior to these entries, records generally documented Mr. McKown denying issues with depression. See for example the previously reviewed record of February 17, 2006, from Rainier Rehabilitation Associates.

June 26, 2006: Dr. Hutchinson
It appears that Mr. McKown is also suffering some post-traumatic depression. I did try him on a course of Cymbalta recently in the office and I think he did gain some benefit. Initially, this was more to treat his neuropathic pain, but I think he did gain benefits in his mood. He recently discontinued it because he felt like he did not want to become dependent on medication to control his mood, but he now recognizes that he has significant post-traumatic depression. I believe he is going to be seeing Dr. Silver in the Trauma Clinic for psychologic counseling. I would like that potential diagnosis added to his L&I claim so we can begin covering him with any potential antidepressant medications. I think Mr. McKown has done exceptionally well considering the nature and extent of his injuries, but we still have quite a ways to go.

August 15, 2006: Dr. Hutchinson
He is a bit more confident and he has been over to the Tacoma Mall where he got shot and has been able to get into several of the stores although he still finds it to be quite slow going. He actually finds the wheelchair to be a much more mobile device if he has several places that he needs to go to.

August 29, 2006: Dr. Hutchinson
Post-traumatic stress disorder and depressive disorder.[7] The patient as yet has not made contact with Dr. Silver. I have encouraged him to continue attempting to contact his office. I have on many occasions discussed with Mr. McKown that it might be helpful for him to go on antidepressant medication. He did try it very briefly when I had placed him on some Cymbalta for the neuropathic pain, but he did not stick with it as he felt that he wanted to try treating his depression without medication. He is now more open to this idea but still would like to consult with the psychologist and I have encouraged him to do this.

September 27, 2006: Dr. Silver
Outpatient Rehabilitation Psychology Consultation: Dan McKown is a 38-year-old man who was referred by Dr. Brendan Hutchinson for psychological counseling for post-traumatic depression... He has depression though has been resistant to the idea of taking antidepressant medications. He has chronic neuropathic pain... He was referred by Dr. Hutchinson and Dr. Stevenson for follow-up on adjustment issues. He saw Dr. DeVore for counseling about 9 months ago. At the current time his only concerns are forgetfulness and difficulty with memory retrieval... Since the shooting he has not experienced nightmares, flashbacks or anxiety. He reported a pre-injury history of mild fluctuating depression associated with his social situation. During his inpatient rehabilitation stay he experienced irritation and distress related to a colostomy. He reported that his future perspective has improved greatly since he recently developed the first signs of neurological recovery of his left leg function... He acknowledged a history of psychological issues related to mistreatment by his stepfather, and being harassed and bullied in high school... He has mixed insomnia related to pain and bladder issues. He has a number of activities that he enjoys doing. He has an active support system and social life. He has not had any significant anxiety

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[7] This record is the first to reference the diagnosis of posttraumatic stress disorder (PTSD), although in a prior visit to Dr. Hutchinson on June 26, 2006, the ambiguous phrase "post-traumatic depression" was used. In providing the diagnosis of PTSD, Dr. Hutchinson did not clarify what reactions had been reported by Mr. McKown to meet DSM's criteria. Dr. DeVore's record of December 1, 2005, specifically documented an absence of PTSD related problems: "He denied any nightmares or flashbacks about the injury and its circumstances." Further, in a visit to Dr. Hutchinson on August 15, 2006, Mr. McKown reported visiting the Tacoma Mall without documented mention of anxiety reactions.

symptoms... He was friendly and talkative in an anxious and dramatic way. He laughed in a forceful way. He minimized any emotional problems or concern. There appeared to be underlying dysphoria... In 7th grade he and a friend became interested in preventing muggings in the neighborhood; this helped his self-confidence in dealing with bullying. He has a long-standing interest in martial arts and weapons, and has a collection of swords. He has worked at ExCalibur for 7 years, specializing in swords... Summary: ... He has a history of emotional sensitivity related to childhood, with probably mild or subclinical dysthymia prior to his shooting. Since the shooting he has had fluctuations in mood, with some increase in dysphoric mood and anxiety. His coping style is to minimize emotional distress. He was open to pursuing counseling, and may need several sessions to become comfortable enough to discuss emotional issues and formulate counseling goals. Diagnostic Impression: Dysthymic disorder, exacerbated by 11/20/05 shooting and loss of function; Anxiety disorder NOS, secondary to 11/20/05 shooting[8]... A trial of psychotherapy is recommended to further assess his emotional adjustment and improve his coping with his loss of functioning, in order to facilitate his reintegration back into work and normal social activities. He may be more open to acknowledging and working on depression issues as he becomes more comfortable with me.

October 23, 2006: Dr. Fish, Physical Medicine
The patient reports he does have bouts of depression, anxiety and changes in memory.

December 4, 2006: Dr. Silver
Outpatient Psychology Progress Note: After multiple times of rescheduling due to conflicts Dan McKown was seen for his first session. He is quite overwhelmed with tasks related to maintaining his home, self-care, and personal and financial obligations. He acknowledges depressed mood. He reports significant pain. Many intersecting stressors; he is having trouble prioritizing his activities. Affect is mildly depressed. More open today compared to evaluation in September... We began exploring difficulties letting go of activities. Plan is for psychotherapy ever two weeks.

December 8, 2006: Dr. Hutchinson
The patient has posttraumatic depression and possibly PTSD. He has seen Dr. Silver in the trauma clinic... I have suggested to Mr. McKown on several visits that he might do well to try an antidepressant medication but he is quite leery of side effects and potential for rebound phenomenon when he discontinues those medications... Assessment: Depression/ PTSD... I would have to state that Mr. McKown will likely not return ever to his job of injury specifically because that store would have to perform significant adjustments in order to accommodate his physical disability... he has significant issues regarding PTSD and

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[8] Text from the DSM-IV-TR, in use at the time of Dr. Silver's diagnoses, provided these criteria for diagnosing Dysthymic Disorder (p. 380): "A. Depressed mood for most of the day, for more days than not, as indicated either by subjective account or observation by others, for at least 2 years; B. Presence, while depressed, of two (or more) of the following: (1) poor appetite or overeating, (2) insomnia or hypersomnia, (3) low energy or fatigue, (4) low self-esteem, (5) poor concentration or difficulty making decisions, (6) feelings of hopelessness; C. During the 2-year period of the disturbance, the person has never been without the symptoms in Criteria A and B for more than 2 months at a time." It is unclear from Dr. Silver's notes how he determined that Mr. McKown met these essential criteria for providing the diagnosis. Further, if the core issue for Mr. McKown's planned therapy was to, "further assess his emotional adjustment and improve his coping with his loss of functioning, in order to facilitate his reintegration back into work and normal social activities," then a diagnosis more directly related to these current situational pressures would have seemed appropriate. At the same time that these points are made, it can be observed that Dr. Silver found no evidence to suggest the clinical concerns of PTSD or Major Depression.

depression that further limit his return to work.[9] I have asked that he continue with regular follow-up with Dr. Silver which he has only recently initiated... he is going to have to consider vocational retraining... At this time, I find the patient is completely and functionally disabled.

January 12, 2007: Dr. Hutchinson
He tells me his physical therapist is quite excited about some of the gains that he has made... He also happily reports that his neuropathic pains, the ones that he describes as sharp electric-like jolts, have substantially reduced over time.

February 7, 2007: Dr. Hutchinson
He is still living in the same ground floor apartment, which is working out fairly well. He relates that he had a kitchen fire due to leaving a burner on with a bag of groceries on top of it.[10] The fire itself did not cause much damage, but the sprinklers ran for 20 minutes before they could be stopped and he had a lot of water damage. He states his paperwork to apply to PLU was ruined in this and he has to get new paperwork... He indicates that PLU might be able to offer him some scholarship money and accessible campus housing... He has gained some weak proximal left leg motor function since I last saw him in July, but I do not anticipate sufficient motor recovery to ambulate without a long leg brace on the left leg. I feel he understands what I am saying, but is hopeful he can prove me wrong.

April 30, 2007: Dr. Hutchinson
He clearly has a diagnosis of attention deficit hyperactivity disorder and that causes his ability to attend and stay focused on task to be quite difficult. Several of his specialists and providers have noted Mr. McKown's inability to stay focused. At one point I did try him on a neural stimulant, however, it causes significant hypertension and tachycardia and he was not able to tolerate it very well. Consideration may be given to additional psychiatric evaluations for treatment of the same and also to continue treating him for posttraumatic syndrome disorder and/or depression.

October 22, 2007: Dr. Hutchinson
Assessment and Plan: Spinal cord injury with resulting chronic paraplegia to the left lower extremity. Depression secondary to the same.

February 14, 2008: Dr. Hutchinson
History of depression. I have given him a sampling of Lexapro 10 mg.

March 21, 2008: Dr. Hutchinson
History of depression, possibly PTSD related to above injury... The patient will continue on his Lyrica, gabapentin, and Percocet and Celebrex as previously listed.[11]

April 28, 2009: Dr. Hutchinson
His use of opioids over the last several years has been fairly sparse and really has not reached the level of chronic, severe pain management, although more recently over the last year, he has been having a lot of breakthrough neuropathic pains of the lower extremities, despite the use of high-dose Lyrica and Neurontin... There are days when [he] is completely free of pain and there are other days when his legs are riddled with pain all day long. He tells me that without the pain medication on those days, essentially he would just crawl into bed and cry all day long.

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[9] See previous footnote.

[10] A Tacoma Fire Incident Report documented a fire at Alder Court Apartments on November 22, 2006.

[11] This record made no mention of the previous visit's prescription for the antidepressant, Lexapro.

3. Mr. McKown was evaluated by a defense-retained neuropsychologist, Dr. Wise, on September 2, September 5, and October 19, 2009. Dr. Wise issued a report that reviewed Mr. McKown's developmental history and injuries suffered on November 20, 2005. Dr. Wise reported:

> He received some counseling after the shooting and took an anti-depressant (Lexapro) for a short period, but stopped secondary to suicidal ideation. Since the shooting, he has received some psychiatric and psychological interventions following a kitchen fire.[12] He added that his treatment provider thought he had Posttraumatic Stress Disorder, but he described himself as having no problems after that conversation.

Mr. McKown was reported to have described some difficulties with memory and concentration which were primarily related to medications and/or pain factors. Mr. McKown was reported to have stated that his IQ was "3 points below genius" and that he had scored "137" on four Internet IQ tests. With regard to emotional issues, Dr. Wise provided the following summary:

> He stated that having a colostomy and gaining weight have been significant issues for self-esteem. When asked if he was depressed, he stated that he has reasons to be although is good at distracting himself. He added that while his doctor considers him depressed, he does not. He was asked if he suffered from Posttraumatic Stress Disorder and he responded that he had paranoid experiences after the fire. He added that he has coped with any PTSD symptoms related to the shooting, but also noted that the fire and shooting were related and said that he has lots of problems due to being wheelchair-bound. He denied recurrent and intrusive recollections of either the fire or shooting and stated that he became desensitized about the shooting because he has talked about it so many times. Mr. McKown reported socializing with friends and has been involved in performing some "stand-up" comedy.

Dr. Wise's psychometrist reported that Mr. McKown's observed affect during testing was "labile at times and depressed, irritable, and anxious." Mr. McKown was reported to have been "quite verbose and appeared histrionic in his complaints." On testing, Mr. McKown earned a Full Scale IQ of 108 (70th percentile). On validity tasks he showed good effort. With regard to psychological functioning, Dr. Wise administered the MMPI-2, a structured personality test. Dr. Wise's summary of test findings was brief, noting that Mr. McKown responded, "in a consistent and candid fashion producing a valid and interpretable profile. Individuals with similar profiles tend to be seen as somatically focused, histrionic in presentation, and moderately depressed." Based on interview and test findings, Dr. Wise provided this overview:

> Despite complaints of memory difficulties, test results were within normal limits and consistent with intellectual functioning for both verbal and non-verbal information... From an emotional standpoint, he specifically denied depression and Posttraumatic stress Disorder symptomatology related to the 11/20/05 shooting. No records were available for review which would document emotional dysfunction after the shooting, but it is reasonable to expect that he had some adjustment issues given the severity and extensiveness of his injuries and resulting disability. His responses to a structured personality test (Minnesota Multiphasic Personality Inventory - II) suggest an individual who is likely to be defensive, histrionic, and somatically-focused. He reported moderate depressive symptomatology

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[12] Mr. McKown's first meeting with Dr. Silver, on September 27, 2006, was prior to the kitchen fire incident that occurred on November 22, 2006.

although he did not specifically endorse this during clinical interview. The clinical impression from interview also did not indicate significant depression and he presented as a friendly, gregarious man who readily engages in social interaction... From a vocational standpoint, he would clearly be capable of learning and retaining mildly complex information at a college level curriculum. His primary restrictions to employment are physical in nature and in that regard diagnoses, prognosis, and treatment (including assistive devices) issues are deferred to appropriate treatment/evaluating professionals.

4. Around the time of, and subsequent to Dr. Wise's evaluation, Mr. McKown continued to consult with his primary care physician, Dr. Hutchinson:

October 5, 2009
A 41-year-old white male with a known history of spinal cord injury to the lower lumbar segment secondary to a gunshot wound to the abdomen. The patient carries previous mental health diagnoses of likely attention deficit disorder, posttraumatic stress disorder, chronic depression related to his debilitated state and now complains of a recurrent panic attack.[13] The patient was in his kitchen cooking when he smelled something burning. That immediately elicited a response of fear and anxiety. He checked the stove and rationally tried to control his fear and then after a few moments, it calmed down. He had a similar event approximately a year or two ago when he was in his car feeling enclosed and he subsequently felt like something was burning. This all stems from an apartment fire that he had a couple of years back, which was fairly extensive. Because of his debilitated state, he had great difficulty getting out of the apartment. In the past we tried him on Lexapro, but he states that the Lexapro was difficult to maintain as he is very forgetful. At times, when he forgot to take the pill he felt more suicidal coming off of it than he felt treated when he was on it. He also is here for a resampling of Lyrica that we use for his chronic neuropathic pain to his lower extremities... I did discuss with the patient that his current insurance limits psychiatric referrals as many psychiatrists in this area, if not all, do not accept Medicare or L&I. I would be willing to put him on a psychotropic medication, but he is very leery of the same stating that the panic attack was only a few moments and does not wish to be medicated at this time.

April 27, 2010
Lumbar spinal cord injury with peripheral neuropathic pain secondary to gunshot wound... Secondary insomnia related to same.

May 18, 2010
Lumbar spinal cord injury secondary to gunshot wound and complicated by paraplegia, neurogenic bladder, and neurogenic gut. Patient has a chronic colostomy in place and he occasionally has to self-cath himself. History of hypertension. History of depression related to the above. Likely history of attention deficit disorder.

October 7, 2011
Complains of having a 3-year history of intermittent right temple headaches. He gets a headache perhaps maybe 1 to 5 times per day. It is not increasing in intensity... Dan does relate having multiple psychosocial stressors in that he is financially strapped... Assessment and Plan: Tension type headaches. I have recommended a trial of Elavil 10 mg p.o., q.h.s., #30 were given with 5 refills.

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[13] This record documents the first mention of psychiatric concerns since Mr. McKown's visit in March, 2008, more than a year-and-a-half earlier. At that time, Dr. Hutchinson noted: "History of depression, possibly PTSD."

November 8, 2011
This is a 44-year-old, white male who was recently hospitalized for symptoms that seem very suggestive of a TIA... He does have an MRI/MRA that shows an old lacunar infarct, but this is remote and nothing is new... in some respects it could have been a very bad adverse reaction to his Elavil.

May 17, 2012
This is a 44-year-old, white male who comes in today to discuss potential cognitive function. Dan is worried about potential brain damage. As the record reflects, he is a victim of a gunshot wound to the abdomen that caused substantial bleeding and hypotension. He did develop a spinal cord injury and is permanently in a wheelchair. Several years later on, he was evaluated for a possible TIA with a CTA, as well as an MRI/MRA of his brain. That revealed no acute bleeds or stroke, but it did show an old lacunar infarct... Dan knows that personally I have known him for many years, and I have always felt that he has a component of attention deficit disorder. He is quite distractible, and he relates that he has great difficulty starting and completing tasks... I have known this gentleman for upwards of 20 years and I would state that is uniformly the case. Many times he has fairly big dreams, but they tend to fall through due to a lack of action, an inability to complete these tasks and follow through. In the past I tried him on a psychostimulant such as Adderall, but he developed significant hypertension related to this, so it was discontinued... He is on both Lyrica and gabapentin, both of which can affect cognitive function. He is worried that it may affect his cognitive function enough that he cannot serve on a human rights committee that he serves here in Tacoma, Washington. I have informed him that I find him to be bright above and beyond average intelligence and creative in his thinking, but whether or not this necessarily affects his capacity to make any ethical judgments, that would require more extensive testing. I had previously wanted to [have] some neurocognitive testing on him after his gunshot wound, but this fell by the wayside. He would be willing to obtain that type of evaluation now[14]... He is in a good mood, smiling, chipper, and he does not appear to be particularly distracted. He seems generally concerned and focused on his cognitive function today. Assessment and Plan: Questionable cognitive dysfunction that could be related to his prior history of trauma many years ago, as he does have evidence of an old lacunar infarct. It is quite possible that the lacunar infarct occurred at this time, but certainly the patient has known hypertension, and this could have been an isolated infarct that occurred with a hypertensive episode. We will go ahead and put in for a neurocognitive assessment, and we can see if we can get that run through L&I.

August 13, 2013
Past Medical History:
1. Spinal cord injury secondary to gunshot wound... in 2005
2. Neurogenic bladder as a consequence of his gunshot wound
3. Neurogenic bowel as a consequence of his gunshot wound
4. Chronic colostomy
5. Paraplegia
6. Neuropathic pain to the left lower extremity
7. Hyperactive bladder
8. Meningocele of the lumbar spine as a result of his gunshot wound
9. Osteoarthritis of the left hip
10. Hypertension
11. Attention deficit disorder
12. Major depression

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[14] Dr. Hutchinson appears to have been unaware the Mr. McKown had received a neuropsychological assessment back in 2009, when he met with Dr. Wise.

April 17, 2014
Patient Active Problem List: Diagnoses
- Paraplegia
- Spinal cord injury
- Neuralgia of lower extremity
- Work related injury
- HTN (hypertension)
- Hypercholesteremia
- Neurogenic bladder
- Neurogenic bowel
- S/P colostomy
- Dermatitis
- Neuropathic pain
- Edema
- Chest pain
- Abnormal cardiovascular stress test
- Paraplegia following spinal cord injury
- Hypertension
- Colostomy in place
- CHF (congestive heart failure)
- Atypical chest pain

December 4, 2014
Hypersomnia with elevated Epworth Sleepiness Scale. Patient certainly is at risk. We'll order sleep study through Medicare. I also think is probably worthwhile for him to get nutritional counseling... I suggested starting him Elavil at nighttime to help improve his sleep and his pain. However he states that whenever he takes sleeping pills he develops severe headaches in the morning... The patient notes that he occasionally snorts or snores and there are times when he'll wake up in the middle night... He is known to be substantially hypertensive which would go along with obstructive sleep apnea.

December 23, 2015
At the door the patient also mentions that he does have significant depression. I broached this topic with Mr. McKown on several occasions. He is uncertain as to whether or not he wishes to try psychotropic medication but encouraged... Have given him Prozac at a low dose 10 mg once a day #90, 3 refills.

5. Mr. McKown's deposition was taken on September 28, 2010, at which time he testified to the following:

(a) Mr. McKown reported that his parents divorced when he was one. He lived with his mother and soon after his stepfather. At the age of five, Mr. McKown moved in with his maternal great grandmother and lived with her until she died during his senior year in high school. Mr. McKown attended several schools. He left high school during Christmas break of his senior year as he was being harassed. Mr. McKown discussed these issues:

> I had a very bad seventh grade. Third stepfather when we briefly lived with him was somewhat caustic and there was no providing for me in the least. So even though I was only there for-- wasn't even there a year my grandmother and I moved back out but I had a really horrible seventh grade. When I went to Jason Lee I became a very popular, funny fellow. And when I got to Stadium, my first two years I had a very great time. And then in my senior year I can suppose why, but somebody who knew me from my seventh grade period decided to haunt me with my-- just harass me constantly with the stepfather's name. I got my regular name back in eighth grade, the McKown name. And it was constant and uabiding, and I mean three minutes

> during class he'd interrupt teachers to harass me while they were talking. They wouldn't say anything to him because he was the nephew of the governor oddly enough.

Mr. McKown reported that he got his GED at Bates after leaving high school.

(b) Mr. McKown reviewed his employment history, reporting that he started working in the fourth grade. Mr. McKown explained: "I've had well-paying part-time jobs. I've had mediocre paying full-time jobs. I've had good full paying jobs. I've had my own businesses. I've been--I believe in working." Mr. McKown started at Excalibur in 1998 and continuously worked there until the time of the shooting. Mr. McKown discussed current problems that would interfere with future employment: "I don't know when I'm going to have pain. I don't know when I'm going to have a colostomy accident... I haven't slept. So when I leave here I'm going to try to sleep. And if my foot keeps this electrical nonsense, I'm going to have trouble sleeping. I don't like to take medication to go to sleep. It gives me a headache... I have a lot of bad nights... I can't drive when I'm in pain and they tell you you're not supposed to drive on Percocets." With regard to Percocet, Mr. McKown reported that he used to take this medication every couple of weeks, but now it's probably once a month, although he can have a whole week that's bad and requires the medication every day. Mr. McKown reported that his physician, Dr. Hutchinson, has advised him not to take Percocet for pain unless the pain gets unbearable. Mr. McKown added that he takes Gabapentin and Lyrica for nerve pain, and he uses a "space boot" that pumps blood from his legs back up into his body. The boot is used twice a day, for an hour and 15 minutes.

(c) Mr. McKown reported that L&I has cleared him to work three hours a week, but "It's really hard now to find somebody to give you a job for three hours." Mr. McKown was asked to explain his understanding of L&I policies with regard to a decree on the number of hours that a person can work while still retaining benefits. Mr. McKown explained:

> Originally if you were working full time you cannot work part time. The loop hole that took me a little while to get them to allow me to do was doing standup comedy. But by the time they finally said yes, you can do standup comedy, one per pay period but no more. I used kind of a lawyeresque argument. I was doing standup on the side before. If you deny me that, aren't you changing my quality of life and they had to think about that and that's where they get the compromise. And by the time I had that ready all the offers dried up because celebrity is a very fleeting thing. And I know club owners who wanted to try me out and they're not ADA. There's no ramp to a comedy club stage. I do fine in the theater show but the year I was shot, yeah, they picked me up, put me on the stage, there would be a lot of applause... So the young people in the comedy club now are who's this guy and, you know, start talking to the waitresses, the tables have lost interest in the show and it just sucks the life out of the room. So I'm pretty much stuck with theater.

Mr. McKown added: "I can work three hours a week and I can do no more than two comedy shows a month as long as they're in separate pay periods." Mr. McKown clarified that he hasn't actually been working the three hours a week: "I haven't found a job that will give me three hours a week. I had something that looked promising and then every time I came to work they said oh, there's not enough people here. We can't use you."

(d) Mr. McKown discussed activities in a typical day, and how on more than 50 percent of his days he doesn't leave the home. Mr. McKown observed, "I'm a people person." Mr. McKown discussed how he sees friends on the weekends. Mr. McKown reported that he has a friend that's been coming over every Saturday since they were in the fifth or sixth grade.

Mr. McKown and his friend play miniature games, role playing games or card games, and try to avoid talking politics. Returning to activities when on his own, Mr. McKown discussed how he writes comedy stuff. Mr. McKown added: "I was writing fantasy TV series before I was shot that I decided to adapt into books because I couldn't get my TV shows funded. And I have three chapters to go on a novel and unfortunately it's been-- I've been fine tuning it but it's been hovering around three chapters to go for a while." More generally, Mr. McKown reviewed daily activities: "I can't be writing but I can at least read while laying on my back in my space boots... I'm spending two and three quarter hours in space boots. Then going to the bathroom is going to be a half hour the first time... Colostomy takes a while to deal with. Cooking takes longer. So my day is really nickeled and dimed away to where it's like what do you do in a day. It's like if I'm lucky, I got some writing in and got to watch a movie or there's some little bit of feeling sorry for myself but that's only natural, I suppose. I try to be upbeat and I'm helping, you know, friends with their projects, if I can, but it's really hard to-- it's hard to put my finger on it."

(e) Mr. McKown discussed friends and family with whom he has contact. Mr. McKown's friend who visits every Saturday is Jerry Watson. Jerry was reported to work as a computer programmer in the research department at University of Washington. Mr. McKown reported that his sister was going to be moving in with him the following week. Mr. McKown sees his father probably every couple of weeks, and they speak on the phone almost daily. Later in the deposition, when asked about other relationships and the universe of people he had contact with, Mr. McKown stated: "There's a huge universe." Mr. McKown reported that a friend, Aarin Berthume, comes to his place maybe three Saturdays out of a month. Mr. McKown also sees Shawn Lawrence, a comedian friend, pretty regularly, maybe three or four times a week, and they talk on the phone every day. Mr. McKown reported that Shawn is disabled through the military, having been shot four or five times. Other friends were listed, including Terry Lepak and Ty Barnett. Mr. McKown testified: "On Sunday I have Ken Hemmel, Jason Powell and Evan Apsringer come by to play a war game we are writing. World War II for you guys on a table like this." Mr. McKown reported that he looks forward to the weekends when he will see his friends. Mr. McKown observed: "Yeah, and my dating kind of went out of the window with the wheelchair." Mr. McKown clarified that he has regular phone contact with just about everybody, "It's about 30 people I know."

(f) Mr. McKown reported that his father runs a prison ministry out of all the prisons, including McNeil and Purdy. Mr. McKown reported that his father did prison time when he was a baby, and his parents divorced while his father was in prison. Mr. McKown reported: "He committed armed robbery with a bee bee gun and he did it a number of times and became a national figure known as the Gentleman Bandit... He did it in style."

(g) Mr. McKown reported that there was a "little bit of a spat" between him and his two half-brothers, Matthew and Mark. Mr. McKown reported that the spat was over how his dad treated him during the shooting. Mr. McKown observed: "You know, they're mid to late 20s and I'm 40 and they're going to sit there and tell me that they are mad that dad likes me better than them. I mean it was like one of the most childish types of argument. And the next thing was there was a little, um, a dispute between me and my dad that we worked out just fine but they were mad about that." Mr. McKown also has two half-sisters, one of

whom, Leighanissa Marush, was moving in with him. The other half-sister, Morgan Marush, was described as a "loving, distant" sibling. Mr. McKown reported: "She was up here once. She got me kind of in trouble with a waitress I liked. But yeah, she's been up here once. I've been down there twice and that's really about all the physical contact we've had in like 20 years."

(h) Mr. McKown reported that if he puts on a fixed leg brace and crutches, he can walk a couple 100 yards in a day, though this wipes him out and brings on pain. Mr. McKown clarified: "See, I'm not actually walking on my left leg. It's in a fixed brace, but by putting the weight on it, the hope is that it will simulate the nerve growth or whatever so it will actually work."

(i) Mr. McKown reported that he has "got two PTSD type things" that were not related to the shootings, but to complications. Mr. McKown explained:

> Well, one, I can't drive on freeways. If I get between a couple semi-trucks, I will be yelling at the top of my lungs at them as I'm trying to gun my car to get away. My physical therapist and doctor think it might be... could be feeling trapped and I don't want to feel trapped. Now, of course I didn't cover this with the psychologist because every time they put a psychologist in front of me, it was my goal to just change the discussion and I don't know, it was like some sort of intellectual sparring. But I did get talked to for PTSD and I had a kitchen fire and in that apartment there were a few times I smelled smoke, clearly smoke. Clear as day smoke, nothing... But the one where I had to go see my doctor, because again smoke is annoying but smelling it as clear as day is not good if there really is smoke and you start thinking it's not really there... but then my car was on fire. Under my seat, on my legs, whatever, car was on fire, something had caught fire. I was sure of it. I could smell burnt wire, I could feel the heat and I was trying to find where the fire was and just, you know, and trying not to crash the car. Pull over to the side, I roll down the window, the second the cold air hit me, all sensation, all smell went away, and that I didn't like. And, you know, my doctor said, that's when he said-- well, he said the fire was-- because okay, the kitchen fire I had in my apartment was because I had a handicapped stove, little knobs in the front. And my friend left groceries on the stove and I rolled by and hit the button with my shoulder and burned the kitchen up. And was trying to fight to put out the fire and the stupid sprinklers hit with enough force they were literally pushing me back... But, anyway, he thought that in the wheelchair I'm more vulnerable than I was before because I wasn't afraid of fire. I was never afraid of fire... And, you know, here I am now afraid of fire because in a wheelchair I can't get away from it apparently. That's his assessment, not mine. And he [Dr. Hutchinson] didn't seem to feel the need for psychology-- and I felt a lot better after he made that conclusion.

Mr. McKown was asked if anyone ever diagnosed PTSD associated with the shooting. Mr. McKown explained: "In the extended sense, yes. In the direct shooting shooting, I would guess no. I'm not worried about-- well, I take that-- maybe I should get that checked. I definitely don't like video games where someone points a gun at me, so I don't play those games." Again, Mr. McKown was asked: "Has anyone, a mental health professional said you have PTSD associated with the shooting?" Mr. McKown answered: "I've seen a couple. I don't know if they said it or not." With regard to a Dr. Silver, Mr. McKown testified, "I don't know what he wrote in his reports." With regard to a doctor at St. Joe's, Mr. McKown reported: "I was having memory problems, and I kept forgetting to go to the sessions, so he got mad and dropped me. But I love the irony, I was having memory problems and I was forgetting to go." Returning to Dr. Silver, Mr. McKown reported: "I can guarantee you Dr.

Silver got a lot of song-- a lot of dancing. I'm not saying it's right. It was just what I did. I just evaded as much as I could. I was in denial. I didn't want to think I had anything wrong with me. I'm a tough guy. Try to be. Not right now." Mr. McKown agreed that he provided Dr. Silver with accurate reports of symptoms he had at that time.

(j) Mr. McKown discussed his religious affiliations and his considering himself a Baptipentecostals, Seventh Day Baptipentecostals. Mr. McKown discussed Scripture and how there is nothing in the entire bible that moves the Sabbath from Saturday to Sunday. Mr. McKown explained: "I don't work on the Sabbath because the Scriptures say do not... I never worked on Saturdays... I've opened my home for recreation and games and relaxation and people can come and unwind at my house on the Sabbath."

(k) Mr. McKown first purchased a gun when he turned 21: "To protect other people and, you know, I guess by a small extension myself." Mr. McKown was asked: "Setting aside November 20th of 2005, have you ever drawn the weapon with the intention of firing it." Mr. McKown answered "yes," and explained: "Myself. The pain was very bad a few times... I put the gun to my head." Mr. McKown recalled one other time when he confronted a man harassing a woman at a bus stop, but on that occasion he didn't have to draw his weapon. Mr. McKown reported that he now has a good holster, having purchased this since the 2005 incident. Mr. McKown explained the purchase: "Fraction of a second is why I'm paralyzed. Fraction of a second. Trigger was going back when the first bullet hit me." As explained by Mr. McKown, the holster he has is to buy that fraction of a second.

(l) Mr. McKown reported that in the two years before he was shot, he practiced shooting at a range with Tony Spratt. Mr. McKown then stated: "He's dead... Oddly enough he was shot... He was running kind of a private halfway house and he got shot outside in front of his own home, because some people that were causing trouble and he made leave, came back with some thug. He was trying to help people who were getting out of jail... I get shot five times directly, he gets killed with a ricochet." Mr. McKown reported that Tony was killed a couple, three years after his own shooting. Mr. McKown apparently became upset at this point in the deposition, testified that he didn't want to eat, and asked to take a minute.

(m) Mr. McKown discussed events on the day of the Tacoma Mall shooting. He was visiting people in Kit's Camera at the time. At the sound of gunfire, Mr. McKown drew his gun, while others in the store hid. Mr. McKown observed that everyone in the mall was running west, so clearly the shooting was to the east. Mr. McKown was asked if he gave any thought to concealing himself. He answered:

> No, no. This guy is shooting at people. There was never a thought of any self-preservation other than take cover so I can get a shot. That was the only-- the only self-preservation I took was to get into a good position to shoot at what I was going after... I can't even fathom the concept of just protecting myself. It almost seems immoral to me. I think it seemed in my eyes selfish to be, you know, running. Maybe if you have a family, I guess I cut that a little more slack, but I actually kind of had contempt for a lot [of the] people that day. You know because if more people had done something, this, you know, could have been dealt with in a much quicker, productive way. I mean I really, really was-- my thought was just stopping this guy, or these guys and I knew that I could die during it, but, you know, somebody's got to do something. For crying out loud, he's shooting by Santa's workshop... I did think there were multiple and I was figuring if I got one, I did my part. If I get lucky, I'll

> get, you know, as many as I need... I think I'm intellectualizing more than I was at the time. I really think it was just get 'em. I really think that was the whole strategy... We're familiar with the, you know, the women that have been raped in the hallways in New York apartments and no one would help, raped and killed. All the mass shootings, you know, up-- the Texas clock tower shooter, you know, that guy was taken down by a police officer and a citizen working together. You know, I mean, I feel it's our responsibility to protect one another. Police are great, but they're there as a deterrent. They're not with us all the time.... I honestly believe we're here to take care of each other... Sorry, I'm getting kind of passionate about it. I'm really frustrated because, you know... I got to calm down.

(n) Mr. McKown came in contact with the shooter and said, "Young man, I think you need to put your weapon down." Mr. McKown continued: "He spins around, I draw and right as I aim and I'm pulling the trigger back, first shot hits me in the abdomen... I'm trying to bring my gun arm down to shoot him. You know, I'm thinking I'm doing my dying actions here, and then he hits me again and again and again and again. Mr. McKown reported how, at the time of the shooting incident, he thought a terrorist attack was underway.

(o) Mr. McKown reported taking an antidepressant at some point, but the medication put him into a suicidal funk and he discontinued the prescription. Mr. McKown observed: "So antidepressants and I don't get along, but I have been given them and I have been considered depressed." Mr. McKown was asked if he had a current diagnosis of depression. He answered: "Maybe, probably. My doctor says so." Mr. McKown observed: "I have been medicated for depression and I stopped taking it. So I figure they must have said I was depressed if they put me on the medication."

6. Dr. Hutchinson's deposition was taken on October 14, 2010:

(a) Mr. McKown established care with Dr. Hutchinson around 2002, during the same year that the doctor established his practice at St. Joseph's.[15]

(b) Dr. Hutchinson discussed Mr. McKown's injuries in 2005, and the course of his medical problems. Dr. Hutchinson discussed how Mr. McKown had complete paralysis on the left lower extremity, leading to muscle atrophy. On the right leg, Mr. McKown was reported to still have fairly good muscle bulk to the thigh. With regard to current medications, Dr. Hutchinson listed Neurontin, Lyrica, Vesicare, Percocet, Lisinopril, and occasionally Celebrex. Dr. Hutchinson explained how Mr. McKown has developed severe hypertension because of his sedentary lifestyle.

(c) Dr. Hutchinson reported that Mr. McKown has had Attention Deficit Disorder all of his life, and the problem is associated with an inability to keep a timely schedule or to focus and concentrate over a long period of time, and being forgetful, especially with important details. Dr. Hutchinson tried to treat the ADD, but Mr. McKown didn't tolerate the psycho stimulants and these medications increased blood pressure.

(d) Dr. Hutchinson was asked if Mr. McKown ever received an evaluation for PTSD. Dr. Hutchinson answered: "You know, again we've tried to get him arranged with a neuro psychiatrist, Dr. Ernst, a couple times. I think he went once or twice. But again, he has

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[15] Washington State Department of Health's Provider Credential web site shows Dr. Hutchinson obtaining his physician's license in 1998.

problems with remembering the dates and remembering to be there on time and a lot of these specialists, you got to be there. If you're ten minutes late, reschedule." Dr. Huitchinson thought the name Frederick Silver sounded familiar but didn't recall seeing an evaluation by that psychologist. Dr. Hutchinson observed: "There aren't very many psychologists, psychiatrists that will help [sic] Medicare in order to treat him."

(e) With regard to employment, Dr. Hutchinson testified: "Is it beneficial for Mr. McKown to go out in public and commune with the rest of humanity, absolutely. Whether or not he can actually do that on a regular and reliable basis, I don't think so."

(f) Dr. Hutchinson was told that Mr. McKown had seen a neuropsychologist at the request of defense counsel. At the time of the neuropsychologist's evaluation, Mr. McKown communicated that he didn't think he was depressed or that he had PTSD. Dr. Hutchinson was asked: "Do you think that as a result of what happened at the Tacoma Mall that Dan, and/or the subsequent issues that he's had with weight gain and the colostomy, have made him depressed?" Dr. Hutchinson answered (p. 33):

> Absolutely. I don't think Dan's being honest to himself but he's come in here, you know, dozens of times and, you know, he's not always depressed on all his visits but he will express severe depressive symptoms about his, you know, his longevity, his life span, his ability to function. I can't fathom why he wouldn't be depressed in his particular situation. And as far as PTSD, you know, he definitely had for the first year or two after, after the incident he clearly had PTSD. He was hypervigilant, he was jumpy. He was having nightmares, you know, the classic symptoms. And now as time has progressed that certainly has lessened but it's not going-- it's never going to go away.[16]

C. Findings presented in this section were obtained during the first assessment interview:

1. Mr. McKown reported that he likes to face the door when positioned in a room. Mr. McKown clarified that he has felt this way since he was a kid.

2. Without being prompted, Mr. McKown began to discuss how he had distracted previous psychologists from assessing emotional issues, by asking them questions and getting them to talk about themselves. Mr. McKown also observed that he is talkative and has ADHD.

3. After a review of the planned assessment meetings, Mr. McKown was asked about previous psychologists. Mr. McKown recalled that he saw the first psychologist, maybe on two occasions, while he was in the hospital at Good Sam. Mr. McKown reported that he kept conversations away from emotional topics and derailed the psychologist with questions. The second psychologist with whom Mr. McKown consulted was at St. Joe's, and was seen maybe two or three years after the shooting incident at Tacoma Mall. Mr. McKown explained that his physician felt he had depression, a "mantle" that was hard for him to accept. Mr. McKown discussed how for him, depression is an excuse. At the time, Mr. McKown was agreeable to seeing a psychologist as he was having memory problems; an

[16] Previously reviewed medical records and reports by two psychologists do not support Dr. Hutchinson's testimony regarding Mr. McKown "clearly" having PTSD.

issue that his physician believed could be a reflection of underlying depression. Mr. McKown noted that he had difficulty remembering appointments or tasks if they were not part of his regular daily schedule. Mr. McKown pointed out that crippling phantom and neuropathic pain keeps him up at night and interferes with functioning the next day. Mr. McKown explained that he wasn't avoiding the second psychologist, but he kept forgetting to keep his appointments, and the psychologist cut him loose.

4. Mr. McKown reported that his friends come over every Saturday.

5. Mr. McKown clarified that his physician, Dr. Hutchinson, didn't know that he played with the psychologists, consciously distracting them away from their questions. Mr. McKown was asked if he would have told the psychologists about problems with depression, if a direct question had been asked of him. Mr. McKown didn't think it was likely he would have disclosed any issues with the first psychologist, but he probably would have provided an answer to the second psychologist, at least in their second meeting.

6. Mr. McKown discussed how he strongly believed he was going to get better, when first in the hospital. Mr. McKown considered how he had numerous life threatening and potentially crippling injuries over the years; all of which he recovered from. Mr. McKown emphasized, "I always recovered." Mr. McKown discussed how he also holds strong religious beliefs. After the shooting, Mr. McKown stated in a televised interview that God didn't do miracles halfway, suggesting that he would heal and be able to walk. Mr. McKown reported that nothing sunk in until maybe a couple of years later.

7. Mr. McKown stated that his trauma has resulted from complications of the shooting, rather than the actual event of being shot. Mr. McKown added that he experienced trauma from bleeding internally for an hour-and-a-half because people couldn't get it together.

8. Mr. McKown reported that his physician, Dr. Hutchinson, is a friend from childhood. Mr. McKown and Dr. Hutchinson, or Barry, have been friends since the 7th grade. Mr. McKown clarified that Barry has been his physician ever since he received his license.

9. Mr. McKown discussed how talking about God performing miracles with the intent of wanting one was manipulative, and maybe that was why God did not respond.

10. Mr. McKown discussed how the gas pedal in a car is lower than the break peddle, and he lacks feeling in the right foot. After trying to drive a regular car, Mr. McKown switched over to hand controls.

11. Mr. McKown had no memory of seeing a psychologist retained by defense counsel prior to the current assessment.

12. Mr. McKown reported that he can forget to bring something up with Dr. Hutchinson because they distract each other. As an example, Mr. McKown discussed how he needs to speak with Dr. Hutchinson about a problem he has addressed with his urologist. Mr.

McKown explained that he is able to urinate without a catheter if he exerts tremendous pressure. The urologist explained that Mr. McKown's limited control is tied to sexual functioning. The doctor advised Mr. McKown to masturbate so as to "use it or lose it." Mr. McKown segued into how he has used this topic in his comedy routine, performing in a show last November. Mr. McKown noted that he can get perhaps an 80% erection. Mr. McKown discussed how he is supposed to save himself for marriage and he hopes to eventually marry and father a child or two. Mr. McKown reflected on how a husband's duty in marriage is to give pleasure to his wife and sire a family. Related to feelings about these matters, Mr. McKown discussed his heritage and being a distant relative of John Adams. Mr. McKown reported that he doesn't have women friends at the present time because money is tight and he can't afford to go out.

13. Mr. McKown observed that it probably would make him depressed if he discussed all the domains of life that aren't going well. Mr. McKown considered how he has lost the ability to participate in the martial arts. Mr. McKown also used to do photography, specializing in portraits. Mr. McKown discussed how he used to take a picture from 50 different angles, but now he is limited by the wheelchair. Prior to his injuries, Mr. McKown used to perform comedy maybe once or twice a week, but now theaters are not set up to accommodate his wheelchair. Mr. McKown commented on how he doesn't have a lot of regrets in life. Mr. McKown segued to discussing the footwork required to do martial arts, and how years ago he had been invited to be on a police force. Mr. McKown was asked if he felt down when considering activities he can no longer do. Mr. McKown answered that he would be very down after the day's meeting.

14. Mr. McKown reported that when he feels down he tends to be introverted, less talkative, and he tries not to cry. Mr. McKown reported that there are times he wants to cry, but his maternal grandfather taught him, "men don't cry." Mr. McKown reported that his grandfather was a tail gunner in the air force. Mr. McKown reported that he is more likely to feel rage when he is in pain, or when he finds himself in a situation like his wheelchair being wedged into a space. Mr. McKown can have waves of sadness but he doesn't feel sorry for himself; rather he feels frustrated and disappointed over his losses.

15. Mr. McKown was asked about the issues of sadness, loss and depression. Mr. McKown discussed how his house is a disaster because he doesn't keep up with cleaning, and that is a part of his depression. Mr. McKown considered physical factors that make it difficult to clean. In addition to being confined to his wheelchair, Mr. McKown has a colostomy bag attached with adhesive, and this can pull away from his body when he is bending.

16. Mr. McKown agreed that he can feel sad and depressed over his losses but those aren't feelings that he wants to wallow in. Mr. McKown acknowledged that it's probably every day that something pushes him toward crying and feeling hopeless. Mr. McKown noted how, at such times, he is good at distracting himself. Mr. McKown discussed how it is difficult to keep a sleep schedule with the horrible pain he experiences. Mr. McKown rated the pain as a 7 to 9, on a 10 point scale. Mr. McKown considered how he wouldn't want to burden a woman with "this package," referring to his physical limitations and difficulties. Mr. McKown observed that everything that makes him feel down is real. Mr. McKown considered

how he should be vacuuming, getting his hair cut, and finishing other tasks rather than watching TV. At the same time, as reported by Mr. McKown, he enjoys watching TV.

17. A set of standardized questions was asked to review the symptoms that define a major depressive episode. Mr. McKown reviewed activities he schedules with friends, and concluded that depressed feelings are likely to occur between Tuesday and Thursday, when he has more time to himself. During those days, as explained by Mr. McKown, he likely watches lots of TV in his messy house. Mr. McKown reported a loss of interest in activities. When asked about the distinction between loss of ability versus loss of interest, the issue was less clear. Mr. McKown discussed how he has a garage set up for various games he plays with friends, but it is difficult to play some of these effectively. Still, Mr. McKown collects figures for the games. However, as discussed by Mr. McKown, there are times when nothing is of interest to him. At such times, Mr. McKown calls people or maybe works on one of his writing projects.

18. Mr. McKown reported that he had a stroke after being shot.

19. Mr. McKown discussed current hobbies and interests. He collects pewter figures, maintains a YouTube channel, works on writing WW2 games, and is working on two books one of which is a fantasy piece to serve as the basis for a TV series, and the other of which is on the shooting. Mr. McKown reported that a comedy show commemorating the 10 year anniversary of the Tacoma Mall shooting was a failure because of limited attendance. Mr. McKown reported that the small audience was depressing. Returning to his writing projects, Mr. McKown reported that his efforts go where his moods send him. With regard to other interests, Mr. McKown plays videogames including StarTrek and Dungeons & Dragons. With regard to reading, Mr. McKown reported that he has trouble focusing.

20. Mr. McKown reported that he was seeing a woman, Elsa, at the time of the shooting, and she stayed with him during a period of great media attention. Then as reported by Mr. McKown, perhaps in January of 2006, Elsa observed, "you're not getting better," and dumped him. Mr. McKown reported that Elsa was one of his models that he photographed, and she liked all the fame he was getting after the shooting. Mr. McKown reported that he laughs, rather than cries, when thinking about Elsa, as it's funny in an ironic sense.

21. Mr. McKown reported that a lot of friends think he is depressed; a lot of friends think he is fine; a lot of friends think he should drink; and a lot of friends think he should smoke weed. Mr. McKown reported that sometimes he thinks he is depressed, and sometimes he distracts himself. Mr. McKown observed how if something is going well, it takes him out of any depression. Mr. McKown stated that he sees himself as having "situational depression," and not "clinical depression." Mr. McKown considered how a pharmacy "rep" would likely tell him he was clinically depressed and needed medications.

22. With regard to trying different types of photography, Mr. McKown observed that his portfolio is all about people, and he wasn't interested in macro photography.

23. Mr. McKown reported that he was "horribly phobic" of driving on the freeway because he gets terrified around semi-trucks. Mr. McKown clarified that he has no problem on regular roads. Mr. McKown did not have a history significant for car accidents, and he denied that hand controls were a difficulty when driving. Mr. McKown thought his fear was secondary to not wanting to go out like a punk, while Dr. Hutchinson reportedly thought the fear was secondary to not wanting to be trapped.

24. Mr. McKown reported that he was awkward as a kid in the 7th grade. Mr. McKown didn't get along with his stepfather, though he gave credit to this man for performing the Heimlich maneuver when Mr. McKown was choking on a piece of steak. Mr. McKown reported that he came from a poor background. In the 9th grade, Mr. McKown learned that he didn't need to have money or be a jock to fit in: rather, he could get attention by making jokes.

25. Returning to the standardized questions that review the symptoms of a major depressive episode, Mr. McKown reported significant weight gain in recent years, secondary to being in a wheel chair, eating fast food, and not wanting to do anything at those times he feels down. Mr. McKown again limited the down feelings to the time frame of Tuesdays through Thursdays. Mr. McKown observed that he hasn't developed a routine for these days. Mr. McKown stated, "I will admit to being down," but clarified that these feelings constitute disappointment rather than clinical depression.

26. Mr. McKown was asked if he knew anyone with clinical depression, in light of the knowledge he appeared to demonstrate when distinguishing that problem from situational depression. Mr. McKown reported that his mother had suffered from clinical depression, as did the mother of his friend, Paul. Mr. McKown discussed how his mother was an alcoholic who also suffered clinical depression, having once been hospitalized. Mr. McKown reported that he lived with his great grandmother during the time of his mother's problems. Mr. McKown observed that he doesn't drink, and so he wondered if he might have depression but the condition wasn't aggravated by alcohol.

27. Returning to the symptoms of depression, Mr. McKown discussed problems sleeping, and reported that these were secondary to pain and thinking too much. Mr. McKown acknowledged having racing thoughts prior to the Tacoma Mall shooting, but in years past he worked three jobs and learned how to shut things down and go to sleep. Now, as explained by Mr. McKown, that positive cycle was broken.

28. Mr. McKown reported that although he may have trouble getting to sleep, he typically stays asleep. Mr. McKown was asked if he had ever been awakened by bad dreams. Mr. McKown reported that he is a Southern Baptist, while his father is a fundamentalist, 7th day Adventist. While in the hospital, Mr. McKown had an intense nightmare in which he was walking in a mall, heard gunshots, and was hit by different groups of weapons. Mr. McKown recalled how he felt pain during the nightmare, as bullets hit him in the eyes and face. Mr. McKown's father was taken aback by his son's nightmare and purchased him a dream catcher. Mr. McKown explained that he is 5/8 Scottish and 1/8 Native American. As

reported by Mr. McKown, he hasn't had a nightmare since. Mr. McKown added that he has had bad dreams that he wouldn't consider a full nightmare, only a couple in the past 10 years. Mr. McKown believed the dream catcher has helped.

29. Mr. McKown reported that he had a two week period during which he lost interest in things and just went through the motions with friends. Mr. McKown also reported times when he has felt slowed down and lethargic; attributing his messy kitchen to those feelings. Mr. McKown agreed that using the dishwasher and cleaning were difficult tasks when in a wheelchair. Mr. McKown reported that he can feel tired and have low energy, though these issues could be secondary to his physical problems.

30. When asked about how he felt towards himself, Mr. McKown discussed how he has an over inflated ego that stops him from feeling down, though God or circumstances have humbled him. Mr. McKown proceeded to discuss events from years ago when he had a company and was going to be given a four million dollar building within which to operate, in exchange for a percentage of profits. Mr. McKown recalled a meeting where the other party critiqued his company's presentation; Mr. McKown took some offense since he had written the presentation; and "my ego was so bad," he blew the deal. Mr. McKown was asked if he had problems with feeling worthless about himself. Mr. McKown answered, "no," while clarifying that he feels his worth has passed. Mr. McKown considered how during the mall shooting he helped protect others, but now he feels he is a drain on the system.

31. Mr. McKown was asked if he ever felt he would be better off dead. Mr. McKown answered, "no," and observed that if God wanted him dead, he'd be dead. Mr. McKown then clarified that there have been times he thought about how he would be better off dead, perhaps because of the pain, or perhaps because of the loneliness. Mr. McKown clarified that he doesn't have these kinds of thoughts when he is with friends, though he can feel detached and down.

32. Mr. McKown recalled one occasion when his leg hurt so bad he started beating on it in anger.

33. Mr. McKown observed that he can be easily distracted because of ADHD.

34. Mr. McKown reflected on how being in a wheelchair equals "house arrest."

35. Mr. McKown asked this assessor about what was being assessed. This assessor explained that there were issues regarding depression, coping, denial, and PTSD that required consideration. With regard to PTSD, Mr. McKown stated, "yes," while providing the qualification, "but not related to the shooting." Mr. McKown discussed how he had dealt with a kitchen fire in his apartment. After that incident, Mr. McKown smelled smoke when it wasn't there. On one occasion, Mr. McKown was driving his car, he smelled smoke and felt a burning sensation. When he opened a window, the fresh air short circuited everything and the misperceptions went away. Mr. McKown recalled the fire happening in

late 2006 or early 2007, while the imaginary fire in the car occurred maybe one or two years later. Mr. McKown reported that he asked Dr. Hutchinson how it could be that he didn't have PTSD from the shooting, but he had these reliving experiences associated with the fire. Mr. McKown reported that Dr. Hutchinson hypothesized that being in a wheel chair made him feel more trapped.

36. Mr. McKown reported that the issue of driving on the freeway and trucks developed after the shooting.

37. Mr. McKown clarified that suicidal thoughts have been associated with pain, and he has not had any of these thoughts in the past two years. Mr. McKown recalled one time that the pain was so bad he put a gun to his mouth; but then he thought about how it was his leg that was the problem so he pointed the gun at that limb. Mr. McKown reported this incident occurred maybe 4 or 5 years ago. Mr. McKown discussed how the only other trigger of suicidal thoughts was when he went off an antidepressant and had a rebound reaction. Mr. McKown reported that the "crash" wasn't worth it, and he hasn't wanted to be on antidepressant medication since. Mr. McKown noted that JFK and Teddy Roosevelt coped without medications. Mr. McKown observed, "Yea, I do get down and I watch television."

38. Mr. McKown was asked if he felt he was living a productive life, despite the disabilities he faces. Mr. McKown suggested a scenario in which he was an imp stabbing at this assessor's foot. Mr. McKown discussed how he has dealt with electrical pain, phantom pain, and nerve pain. Mr. McKown's discussion involved several transitions and topics, including his numerous friends and issues with pain. Mr. McKown recounted a time when friends were over and they decided to see a batman movie, leaving him alone in his apartment. Mr. McKown discussed how his sister got upset with these friends for not staying with her brother.

39. Mr. McKown completed several checklists, including one that covered the 17 symptom criteria in DSM-IV for diagnosing PTSD. Several of the items endorsed by Mr. McKown were reviewed for purposes of clarification. With regard to intrusive thoughts, Mr. McKown reported that there isn't a day he doesn't think of the shooting and mistakes he made. Mr. McKown reported that disturbing memories, thoughts, or images of the shooting also occur every time there is a mass shooting on TV, or he has to deal with a physical complication.

40. Mr. McKown took a break to change his colostomy bag. When he returned, Mr. McKown commented on how he hates changing the bag, it's depressing, and he doesn't feel like a man.

41. Mr. McKown reported that he was teased as a kid, mostly around the issue of having red hair.

42. Returning to the shooting incident, Mr. McKown discussed how he didn't see anyone representing the mall, and he believed that communications were horrible.

43. With regard to having physical reactions when reminded of the shooting, Mr. McKown discussed how his heart raced and he had trouble breathing while filling out the forms. Mr. McKown reported that reminders are stressful if he can't distract himself using humor. Mr. McKown considered his approach to coping and stated, "I think my method is working."

44. Mr. McKown recalled an incident when he was at a gas station; a tire blew; it sounded like a gunshot; and he scanned his body to check for injuries. Mr. McKown reported that during the event his heart didn't pound as much as might be expected. Mr. McKown explained his reactions as part of his "warrior tradition," wherein he automatically went into the mode of checking for the shooter.

45. Mr. McKown reported that it used to be fun to relive the shooting event, while thinking about it now makes him sad and it feels pathetic. Mr. McKown reflected on how he used to be sure he'd get better and walk again; but after five years that belief went away and he feels more jaded.

46. Mr. McKown was asked about his endorsement on a PTSD checklist of an item concerned with avoiding activities or situations that serve as reminders of a stressful experience. Mr. McKown reported that he hasn't gone practice shooting since the time of his injuries, though he continues to carry a gun. Mr. McKown discussed how he used to go every month to keep up his skills, often with his friend Paul, and sometimes with others. Mr. McKown observed, "I went to the mall no problem. Just haven't gone shooting." Mr. McKown reported that he doesn't like the sound of gunshots. Although Mr. McKown doesn't like video games with rifles, he still enjoys fight games. Mr. McKown reflected on how he had to get used to the sound of gunshots to attend movies. Using a scale from 0 to 10, where 0 reflected "no anxiety," and 10 reflected "the most extreme levels of anxiety," Mr. McKown provided a rating of 1 or 2 if he were to listen to the sound of a gun on his home computer. Mr. McKown reported that he went to a gun range 3 or 4 years ago, and hasn't gone back since. With regard to tension reactions, Mr. McKown provided a rating of 8 or 9.

47. Mr. McKown was asked about his endorsing a PTSD checklist item concerned with being watchful or on guard. Mr. McKown discussed how he never knows what's going to happen and so he is more alert. Mr. McKown recalled that during the mall incident the shooting stopped and he put away his gun, forcing him into a quick drawer situation.

48. Mr. McKown reported that he has several friends who have been shot, the first incident occurring in Junior High School. Mr. McKown recalled two friends who were killed by gunshot, Levi and Tony. Mr. McKown discussed the circumstances that led to his friend, Tony Spratt, being killed. Mr. McKown was asked if he experienced disturbing images concerning that incident. Mr. McKown reported that Tony was one of the first people he saw dead, as there was an open casket service. Mr. McKown stated that he chooses how much to allow the images.

49. Mr. McKown was asked about past failures, an issue covered in the checklist concerning depression reactions. Mr. McKown characterized the whole mall shooting as a failure, because of how various parties handled it. Mr. McKown also listed the comedy show last November as a failure because so few people attended. Mr. McKown discussed how he has been trying to gain "traction," by holding the show and conducting other activities. Mr. McKown observed, "I'm not sitting around idly." Mr. McKown added that he has had to cancel meetings because of pain.

50. With regard to a depression item concerning feelings of guilt, Mr. McKown discussed "mistakes" in the shooting; having to masturbate; and failures running a company that he started in 1986, and was gaining traction prior to the shooting.

51. Mr. McKown commented on feeling like he had multiple personality disorder because he was different in the present interview, prior to having to change the colostomy bag.

52. Mr. McKown started to work on an assessment instrument, the Minnesota Multiphasic Personality Inventory (MMPI-2), but began to get butterflies in his chest. Mr. McKown reported this type of experience maybe 2 or 3 times in the past five years. Mr. McKown observed that he is more prone to anger than to panic. The test was stopped with the goal of completing it during the second scheduled meeting. The remaining time was spent by continuing the interview.

53. Mr. McKown reviewed his developmental history. He was born in 1967; grew up in the Puget Sound Basin; left high school in his senior year after his great grandmother passed away; got a GED; has never been engaged or married; has experienced mixed success as a comedian; and has demonstrated a good eye for others with talent. With regard to significant relations, Mr. McKown has never lived with a woman, having been told not to do that outside of marriage and not wanting to live like a hypocrite. Mr. McKown characterized most of his relationships as having been short lived, with his being too picky early on and girls dumping him after that. Mr. McKown reported that no relationship lasted upwards of 6 months, except for Kelly who he continued to date even though she just wanted to be friends. Mr. McKown reported that Kelly thought his friends were nerds and she didn't share his fondness for sitcoms. Mr. McKown reported that he has had times that he felt down about relations not working. Mr. McKown noted that when he was younger he was arrogant. Mr. McKown discussed family values within which he was raised. Mr. McKown characterized his family as religious and conservative: believing in gun ownership, traditional values, a man pays for a date, you don't live with a woman without being married, and you mean what you say.

54. Mr. McKown reported that he acquired a gun to serve as a tool. Mr. McKown discussed his views regarding the whole point of society, which is to band together to protect us from the rest of the world. Mr. McKown was asked if events ever called him to act, prior to the Tacoma Mall shooting. Mr. McKown recalled past situations where he helped break up fights. Mr. McKown noted that in all the situations he has faced, he always looked around to see if there was someone more qualified to take action. Mr. McKown observed that he

"doesn't jump in eagerly." As regards past occasions, Mr. McKown reported that he has lost count, while noting that he has never delivered a baby. Mr. McKown stated: "The world works better if we help each other."

55. Mr. McKown reported that he would always pull over if someone was on the side of the road waving for assistance. Mr. McKown recalled a news story about a woman being raped in that type of situation. Mr. McKown discussed how he has a gun and some training so that he would be in a position to lend assistance. Mr. McKown reported that many years ago he was working at a 7-11 that was robbed 5 times. Mr. McKown concluded that taking action at the Tacoma Mall was his civic responsibility.

56. Mr. McKown was asked how he would react if he was in a bank that was being robbed. Mr. McKown answered that he would cooperate fully with the robbers since they were there for money. Mr. McKown clarified that he takes responsibility for people, not for things.

57. Mr. McKown reported that his father was a hold-up man, who used a bee bee gun when robbing businesses. Mr. McKown's father went to jail for a year and a day, when Mr. McKown was just one year old. Mr. McKown added that his mother had expensive habits. As to where Mr. McKown's values come from, he pointed to his great grandmother, his father, and uncles.

58. Mr. McKown was asked if other family members had psychiatric problems, in addition to his mother having been reported to have had depression. Mr. McKown thought that an uncle maybe had OCD, but otherwise there was no history to report.

59. Mr. McKown discussed how he was stepping up to his responsibility during the Tacoma Mall shooting. At the time of the incident, Mr. McKown felt proud of himself and pleased that he wasn't coming apart. Afterwards, Mr. McKown had a conversation with God, feeling guilty for letting him down. Mr. McKown observed, "You can see why I'm having a panic attack thinking about this." Mr. McKown considered that his one mistake was putting his gun away when he thought the shooting had stopped. Mr. McKown recounted events, with people running by him; then silence; followed by the shooter coming around a corner with gun in hand. Faced with the shooter, Mr. McKown chose words rather than drawing his gun. After being hit, while on the ground, Mr. McKown attempted to raise his weapon, praying, "Please God let me shoot this guy before he kills someone else."

60. Mr. McKown confirmed that when he returned to the Tacoma Mall he was able to do so without a problem. Mr. McKown observed that he still has a gun; security at the mall has been improved; and lightning doesn't strike twice. Mr. McKown discussed how he went back to the same spot on the one year anniversary of the shooting. Mr. McKown considered how a lot of people were feeding his ego at the time, with people telling him he was a hero.

61. Mr. McKown was asked to consider his situation if he physically improved and could walk. Mr. McKown responded that in the proposed situation, he could do most activities

and would then be dealing with the pain. Mr. McKown added that if the pain went away he would be in a position to work; if the colostomy bag went away he could have a family.

62. Mr. McKown was asked to use a scale from 0 to 10, where 0 represented "no anxiety," and 10 represented the "highest levels of anxiety." With regard to going to the Mall, Mr. McKown consider such settings as a "medium target," and provided a tension rating of 2 or 3, while noting it depends on the day. With regard to being in a school or post office, Mr. McKown considered these settings as "soft targets," where guns are not allowed, and he provided a tension rating of 4 or 5. With regard to court houses or police stations, Mr. McKown characterized these settings as fortified or "hard targets," and provided a rating of 0 to 1. Mr. McKown observed that he can feel more tense in a mall or other crowded areas. With regard to the comedy show held this past November, Mr. McKown provided a rating of 0 to 1, and noted that guns there were unlikely. When it comes to going to the bank, Mr. McKown generally uses the drive through.

63. Mr. McKown reported that he has been back to the Tacoma Mall a bunch of times, but his visits are less frequent because people he knew have left over time, stores have closed, and he can purchase items on-line.

64. Mr. McKown recounted an incident when he was doing PT in the hospital and a red alert sounded. Mr. McKown grabbed a steel rod and wheeled himself into the hall. He went over to the nurses and determined there was not a threat.

65. Mr. McKown was asked how he thought he might have reacted if a tire had blown at a gas station, prior to the Tacoma Mall shooting. Mr. McKown reported that he would have looked around, but probably wouldn't have thought he had been shot. Mr. McKown couldn't decide if he had over reacted to the gas station incident that did occur, or if he was just guessing wrong.

D. Findings presented in this section were obtained during the second assessment interview:

1. Mr. McKown reported that he didn't get to bed until 4 a.m., and probably didn't get to sleep until 5 or 6.

2. Mr. McKown was asked to complete a PTSD checklist that covered the 20 symptom criteria listed in the DSM-5. While considering an item that addressed the issue of bad dreams, Mr. McKown discussed how he doesn't dream about his traumas and being in a wheelchair. Instead, as discussed by Mr. McKown, he has dreams in which he is walking and functioning. Mr. McKown considered how it is stressful coming out of these dreams; just as he finds it stressful when he dreams of having love or money. Mr. McKown observed that all these dreams are about things that aren't real, as if his mind is flirting and then pulling the rug from under him. Mr. McKown commented on how what constituted his "stressful experience," a term used on the symptom checklist, was his current state. With regard to avoiding reminders of the trauma, Mr. McKown observed that he can go to the mall but not

to shooting ranges, so it was "50/50." Mr. McKown commented, while filling out the checklist, "I'm all over the map on this one." Mr. McKown stated: "After you're done with me I'm going to have to join a support group because I didn't think I had PTSD but now..."

3. While completing a checklist of items related to satisfaction with various areas of life, Mr. McKown discussed famous people in his lineage, observing that he is a descendant of US presidents and William Wallace. Mr. McKown explained that his family didn't discuss their lineage until he was in high school because they didn't want him to be arrogant. Mr. McKown considered how he might have worked harder in school if he had known about his heritage.

4. Mr. McKown discussed how scripture says a man is not complete until married. Mr. McKown reported that he felt like half a man before the shooting. Now that he is in a wheelchair, he feels like a quarter of a man.

5. With regard to children, Mr. McKown discussed how he gets some pleasure from his nieces and nephews, but doesn't have his own children.

6. Mr. McKown was asked if he ever experienced a reliving of events in the Tacoma Mall shooting. Mr. McKown answered that this hasn't happened. Mr. McKown then discussed how he could kick himself for having put his gun away during the shooting, and he did have a waking dream about this. Mr. McKown explained that after the incident he was praying over his mistake, and he experienced a vivid image of his leaping out with his gun and getting shot in the forehead. Mr. McKown felt the experience was God's way of saying, "If you had..... so shut up!" Mr. McKown found comfort in that visual experience. Mr. McKown believed that having this vision in the middle of a prayer could have been a miracle.

7. Mr. McKown reflected on how he takes everything in life for granted and expects things to work out.

8. This assessor listed physical problems that Mr. McKown had discussed, including paralysis, pain, colostomy, partial erectile dysfunction, TIA, and high blood pressure. Mr. McKown agreed that these problems interfered with the quality of his life.

9. Mr. McKown reported that he has been closer to his father since the shooting, but more distant to a brother who felt jealous over the attention Mr. McKown was receiving. Mr. McKown discussed family issues and dynamics.

10. Mr. McKown observed how friends visiting on Saturdays has stayed the same since the shooting, but everything else in life has taken a turn for the worse. Mr. McKown agreed that the main reason for things being worse had to do with his medical problems. Mr. McKown observed, "I'm not haunted by being shot. [I'm] tortured daily by pain." Mr. McKown wondered if he wouldn't think about his assailant if he didn't have pain.

11. With regard to treatment, Mr. McKown reported that L&I cut off physical therapy a

few years ago, and occupational therapy stopped a couple of months after he got out of the hospital. Aside from PT and OT, Mr. McKown did not have additional rehab. Mr. McKown reported that current treatment involves meetings with Dr. Hutchinson. Mr. McKown reported that he felt sad when they discontinued PT. Mr. McKown observed that he hates days when he doesn't have something to do.

12. Mr. McKown reported that PT left him with instructions, but he only does maybe half of what he was told to do. Mr. McKown observed that the colostomy bag makes it difficult to do some of the exercises. Mr. McKown reported that in PT he was a cooperative patient but bad with homework. Mr. McKown observed that when he is at home, he is alone, he can fall into a funk, and he watches TV instead of doing things.

13. Mr. McKown believed that his current condition and feelings were largely grounded in reality.

14. Mr. McKown observed that he is supposed to write books and clean his house, but he prefers to have social contacts. Mr. McKown reported that his kitchen used to be clean, prior to his injuries, and he used to be a good cook. Mr. McKown was asked if there were other activities that might help him to be with people. Mr. McKown noted that when gas was $4 a gallon, the high cost grounded him.

15. Mr. McKown reported that he dated during the first 2 or 3 years after the shooting. Kelly, the girl he dated and stayed friends with for 9 months, helped Mr. McKown transition to his apartment. Mr. McKown also discussed his friend, Paul, who has been trying to get him married since they were in high school. When asked why he never did get married, Mr. McKown explained that part of it was his being picky, part of it was his working, and part of it was bad luck with unstable individuals. Mr. McKown reported that being home alone makes him sad and seeing people in relationships makes him sad. Mr. McKown discussed how he has avoided going to holiday functions because it is hard to be around couples.

16. Mr. McKown reported that he was the photographer at Barry's (Dr. Hutchinson's) wedding. Mr. McKown explained that Barry had remarried sometime after the Tacoma Mall shooting.

17. Mr. McKown was asked about the time he contributed to a 4 million dollar business deal falling through. Mr. McKown discussed complicating issues with financial arrangements, and clarified that the deal fell apart for a host of factors. At the same time, Mr. McKown blamed himself for the loss, believing he had acted arrogantly. Mr. McKown observed: "I was happier when I was arrogant because I was more delusional than now."

18. Mr. McKown reported that he had not tried ADHD medications prior to the Tacoma Mall shooting. Mr. McKown considered how Teddy Roosevelt wouldn't have been a great man if he managed his hyperactivity with meds. Mr. McKown reflected on how challenges and adversity can make for a stronger person. Mr. McKown qualified these thoughts with the

observation that he didn't see, at this point, how it applied to him, but he hoped it did. Mr. McKown also noted that his family held to the philosophy that you cope by toughening up.

19. Mr. McKown hasn't tried medical marijuana since he doesn't like mind altering drugs and he isn't about to smoke a joint. Mr. McKown would consider trying medical marijuana if mind altering components were low or absent, and it was in pill form.

20. Mr. McKown felt that it was hard to project into the future. Mr. McKown has projects that include his YouTube channel, games and writing, but he doesn't know where these will go. Mr. McKown observed, "I'm defined by my arts, creation. I don't have a family." Mr. McKown considered how his goals haven't changed as a result of the shooting: he wants to continue relations with friends and family, and he wants to continue work on his projects. Mr. McKown observed that working on goals in a seated position makes life more challenging. Mr. McKown reported that he still tries to do comedy, but manages maybe only one show a year. Mr. McKown discussed how he had been writing a fantasy book prior to the Tacoma Mall shooting, and he had maybe three chapters left to complete. Now, years after the shooting, Mr. McKown is no closer to completing that project. Mr. McKown observed, "I have focus issues."

21. Mr. McKown discussed how he can recall past events that occurred before the shooting better than he recalls last weekend. Mr. McKown thought his short term memory was "not so hot." This assessor presented Mr. McKown with a set of numbers, 7-6-4-8-3, none of which he recalled after a short distraction. When presented with three words, house-tree-person, Mr. McKown recalled the first two. Using a scale from 0 to 10 to rate memory problems, with higher ratings reflecting better memory, Mr. McKown reported that friends would put him at a 2, while he would put himself at a 4.

22. Mr. McKown reported that he remains optimistic about his projects, and believes he will succeed. Mr. McKown clarified that it has been a struggle to stay optimistic, but he gets recharged by his friends. Mr. McKown reported that there are times he is happy, and times he is not. Mr. McKown observed that a person who carries a gun has to be a mix of pessimism and optimism, since it is pessimistic to think you'll need a weapon, but optimistic to think you can affect a situation by using it. With regard to ever walking again, Mr. McKown reported that he was optimistic the first 8 years after the shooting, but is now pessimistic.

23. With regard to future therapies and medical breakthroughs, Mr. McKown clarified that he would never do embryo cell procedures as that would make him a hypocrite, but he could consider stem cells from his own body. Mr. McKown was pessimistic that new breakthroughs in medicine will ever help. Mr. McKown observed that thousands of people prayed for him after the shooting and it work, so he is realistic now.

24. Mr. McKown reported that he was completely optimistic that positive relations with friends and family will continue into the future. With regard to living to a ripe old age, Mr. McKown reported that he doesn't think about this. With regard to having a future

relationship with a significant other, Mr. McKown reported that he used to be optimistic, but currently he felt pessimistic.

25. Mr. McKown was asked if there were other activities that might add to life's pleasures. Mr. McKown responded that there are a lot of things he can't do.

26. Mr. McKown discussed the history of his being asked by the Mayor of Tacoma to participate on the city's Human Rights Commission. Mr. McKown explained that the Mayor saw him as an individual with uncompromising values. Mr. McKown recalled that he was invited to join the commission in 2006. Mr. McKown discussed his difficulty keeping to scheduled meetings because of pain, and how this problem eventually led to his being discharged. While on the commission, Mr. McKown felt he held the members to "logical standards." Mr. McKown discussed various examples of issues with which the commission dealt. During this discussion, Mr. McKown demonstrated involvement, if not enthusiasm, for the topics; good memory; and excellent ability to communicate on the issues. The audio tape can be referenced to fully appreciate the quality of Mr. McKown's discussions.

27. Mr. McKown discussed how he tried to do volunteer work with kids in the hospital, but he couldn't keep a schedule because of pain, and the hospital required regular attendance. Mr. McKown observed, "That's why I can't keep a regular job." Mr. McKown reported that pain was what was wrecking him. Mr. McKown reportedly participated in a pain management program. Mr. McKown couldn't recall the name of that program, but believed it was located on the Hilltop, in Tacoma.

28. Mr. McKown stated that he felt depression at times, but he believed it was situational, not clinical. Mr. McKown explained: "Let me date someone and I'm fine." Mr. McKown commented on how a relationship would turn his life around.

29. With regard to anxiety around trucks when driving, Mr. McKown was asked to use a scale from 0 to 10, where 0 reflected "no anxiety," and 10 reflected the "highest levels." For driving around town without the presence of trucks, Mr. McKown provided a rating of 0 or 1. With regard to driving on the freeway, without there being any trucks, Mr. McKown provided a rating of 3 or 4. A similar rating was provided for driving around town when trucks were present. Mr. McKown provided a rating of 9 to reflect tension levels when driving on the freeway with a truck next to his vehicle. Mr. McKown increased the rating to a 10 if there were two trucks. Mr. McKown reported that these anxiety reactions began after the shooting and have not gotten better over time. Of interest, Mr. McKown provided a rating of 0 to 1, if he was the passenger in a vehicle being driven on the highway with a truck on the driver's side. Mr. McKown increased his rating to a 2 or 3 if he was a passenger in a vehicle being driven on the freeway and a truck was on his side. When asked about the lower ratings if a passenger, Mr. McKown explained that he has more confidence in a friend driving. Mr. McKown wondered if maybe he feels he is cursed, just as he has felt his company was cursed. Mr. McKown stated that his comment about the company was half a joke and half real.

30. With regard to the issue of panic attacks, Mr. McKown reported that he had a few episodes concerning smoke but those don't happen anymore. Apart from the smoke issue, Mr. McKown once felt panic or butterflies in his chest, at which time he went to the ER. Mr. McKown noted that this also happened during our first interview when he was beginning to work on a test. Altogether, Mr. McKown estimated that these panic-like feelings have occurred only two or three times in the last couple of years.

31. Mr. McKown discussed fears of spiders and heights that did not appear to rise to the level of a clinical phobia.

32. Mr. McKown clarified that he hasn't gone shooting because of the expense of these trips, as well as his not liking the sounds. With regard to games that involve shooting, Mr. McKown reported that he didn't like these at first, but he has gotten used to it. More uncomfortable than the sounds of a gun firing, are games where guns are pointed at him. Mr. McKown said he doesn't play those games since his injuries. With regard to movies, Mr. McKown used to flinch when a gun was fired, but over time he has become accustomed to this.

33. Mr. McKown discussed the issue of erectile dysfunction and having been instructed to masturbate. Mr. McKown reported that every time he ejaculates, he feels that a piece of him has died. Mr. McKown discussed how masturbation violates his religious beliefs, although maybe that should only apply if it is done for selfish pleasure.

34. Mr. McKown discussed his religious friends and how, years ago, they all felt God had moved them in some way. One friend had become a pastor, another friend had purchased a house for his family. During these years, which were prior to the Tacoma Mall shooting, Mr. McKown felt a little slighted, as if he had not received direction. When the shooting occurred, Mr. McKown thought that maybe God wanted him to be there. While Mr. McKown wasn't happy that he was paralyzed, perhaps it was his purpose to serve as the reason the gunman stopped shooting people. Mr. McKown considered the saying: "Bloom where you're planted."

E. Findings presented in this section were obtained from psychological testing:

1. Mr. McKown completed several symptom checklists.[17]

(a) Mr. McKown completed the Quality of Life Scale (QOLS), a 16 item checklist on which an individual rates their satisfaction in various areas of functioning (e.g., financial security, health, close friends, work). With regard to feelings "at this time," Mr. McKown rated three areas as "Delighted;" five as "Pleased;" one as "Mostly Satisfied;" two as "Mixed;" two as

[17] Checklists that review the symptoms of psychiatric disorders, such as depression or PTSD, have no greater validity than verbal reports. Despite their limitations, checklists can be useful in forensic and disability determinations as a supplemental source of data, and to demonstrate symptom endorsement patterns.

"Mostly Dissatisfied;" two as "Unhappy;" and one as "Terrible." Mr. McKown's responses yielded a total score of 75.

Mr. McKown was asked to complete the QOLS with regard to recalled levels of satisfaction prior to the Tacoma Mall shooting. With regard to that time frame, Mr. McKown rated seven areas as "Delighted;" four as "Pleased;" two as "Mostly Satisfied;" and three as "Mixed;" yielding a total score of 95.[18]

Despite an overall higher score regarding satisfaction prior to the shooting, three areas received a higher post-shooting rating: "Relationships with parents, siblings & other relatives," "Helping and encouraging others, volunteering, giving advice," and "Participating in organizations and public affairs."

(b) The Beck Depression Inventory (BDI-II) is a straightforward checklist of symptoms associated with clinical depression. With regard to reactions during "the past two weeks, including today," Mr. McKown obtained a score of 34.5, a finding consistent with individuals who report severe problems with depression.[19]

(c) Mr. McKown completed the Beck Anxiety Inventory (BAI), a straightforward checklist of 21 items related to symptoms associated with the anxiety disorders. With regard to reactions during "the past week, including today," Mr. McKown obtained a score of 16, consistent with individuals who may be having moderate problems with anxiety.[20]

(d) The PTSD Checklist (PCL-C) contains items that reflect the 17 symptom criteria that were listed in the DSM-IV for diagnosing PTSD. Each item is scored from 1 (Not at all) to 5 (Extremely), allowing a range of scores from 17 to 85. On this form, with regard to reactions "in the past month" Mr. McKown endorsed 13 items, rated 8 of these as "Extremely" or "Quite a bit," and obtained a total score of 54.[21]

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[18] C.S. Bruckhardt & K.L. Anderson (2003). The Quality of Life Scale (QOLS): Reliability, Validity, and Utilization. *Health and Quality of Life Outcomes, 1, 1-7.* In this article, Bruckhardt & Anderson report that an average total score for healthy individuals is about 90. Adult patients with conditions such as rheumatic disease, rheumatoid arthritis, or osteoarthritis obtain average scores in the range of 83 to 87. Bruckhardt & Anderson noted how scores on QOLS find "most patients reporting some degree of satisfaction with most domains of their lives."

[19] See A.T. Beck, R.A. Steer, and G.K. Brown (1996), *BDI-II Manual.* San Antonio: The Psychological Corporation; Harcourt Brace & Company. Also, L.B. Seggar, M.J. Lambert, and N.B. Hansen (2002), *Assessing clinical significance: Application to the Beck Depression Inventory,* Behavior Therapy, 33, 253-269. On one of the 21 BDI items, Mr. McKown chose between two answers, averaging the scores of 1 and 2 for that item. Rather than reporting 34 or 35 as his score, the mean figure is provided.

[20] A.T. Beck & R.A. Steer (1993), *Beck Anxiety Inventory Manual,* San Antonio: The psychological Corporation; Harcourt Brace & Company.

[21] Cut scores of 44 and 50 have been proposed to identify cases of PTSD with the PCL-S. See E.B. Blanchard, J. Jones-Alexander, T.C. Buckley, and C.A. Forneris (1996), *Psychometric properties of the PTSD checklist (PCL),* Behaviour Research and Therapy, 34, 669-673. Also, K.J. Ruggiero, K. Del Ben, J.R. Scotti, & A.E. Rabalais (2003), *Psychometric properties of the PTSD checklist-Civilian version,* Journal of Traumatic Stress, 16, 495-502. On two of the PCL-C items, Mr. McKown chose between two answers, which when averaged produced the total score of 54.

(e) The PCL-5 contains items that reflect the 20 symptom criteria for diagnosing PTSD in DSM-5. Each item is scored from 0 (Not at all) to 4 (Extremely), allowing a range of scores from 0 to 80. With regard to reactions in the past month, Mr. McKown endorsed 19 of the items, rated 12 of these as "Extremely" or "Quite a bit," and obtained a total score of 53.[22]

(f) Mr. McKown completed the Adult ADHD Self-Report Scale (ASRS), a checklist that covers diagnostic criteria for Attention Deficit and Hyperactivity Disorder among adults. With regard to "Inattentive" behaviors, Mr. McKown endorsed all 9 items and obtained a total score of 32. With regard to "Hyperactive/Impulsive" behaviors, Mr. McKown endorsed 8 of 9 items and obtained a total score of 26.[23]

2. Mr. McKown completed the Minnesota Multiphasic Personality Inventory.[24] Scales on the MMPI-2 are reported in terms of "t-scores." A score of t= 50 is average or "normal," while t-scores ≥ 65 are considered significantly elevated. T-scores obtained by Mr. McKown for the main validity and clinical scales were: L= 52, K= 47, F=61, Hs= 75, D= 64, Hy= 89, Pd= 79, Mf= 56, Pa= 94, Pt= 77, Sc= 84, Ma= 62, and Si= 47. Mr. McKown demonstrated good comprehension of, and consistency in responding to item content (VRIN, t= 61; TRIN, t= 57T). Overall, Mr. McKown's profile was valid and consistent with individuals who experience significant distress across multiple domains including depression, anxiety, feelings of isolation and disappointments in interpersonal relations.

In addition to a review of Mr. McKown's test findings, a computer generated "Personal Injury Interpretive Report" was obtained from Pearson scoring service. The following hypotheses were among those generated in the report:

> Individuals with this extreme MMPI-2 clinical profile tend to be quite disturbed psychologically... He endorsed a number of items suggesting that he is experiencing low morale and a depressed mood... He endorsed a number of items reflecting a high degree of anger... He is rather high-strung and believes that he feels things more or more intensely than others do. He feels quite lonely and misunderstood at times. He endorsed a number of extreme and bizarre thoughts... He apparently believes that he has special mystical powers or a special mission in life that others do not understand or accept... His high endorsement of general anxiety content is likely to be important to understanding his clinical picture... He tends to be rigid in relationships, has a "closed" attitude toward others' viewpoints, and therefore probably has disturbed social relations. Although this MMPI-2 clinical profile reflects a long-standing behavioral pattern, the present situation may be an aggravated reaction to a perceived situational threat. He tends to feel insecure in personal relationships, is hypersensitive to rejection, and may become jealous at times. He tends to need a great deal of reassurance... There is sufficient evidence of a thought disorder to warrant further

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[22] The PCL-5 is a relatively new instrument based on the DSM-5, which was published in May, 2013. Guidelines for this checklist state: "A PCL-5 cut-point of 38 appears to be a reasonable value to propose until further psychometric work is available."

[23] Instructions for the ASRS indicate that scores of 24 or greater are associated with individuals who are "highly likely to have ADHD."

[24] Psychological tests, like the MMPI-2, can assist in the assessment of an individual's psychiatric status, but they do not provide conclusive diagnostic information. Instead, psychological tests generate hypotheses that can be evaluated in the light of other data.

> evaluation. His unusual thinking and bizarre ideas should be taken into consideration in any diagnostic formulation. Individuals with this MMPI-2 pattern typically do not seek psychological treatment on their own... His proneness to experience problems with anxiety, depression, his health, and unusual thoughts might make it difficult for him to think clearly or function effectively.

F. The following opinions regarding Mr. McKown are based on information and findings available at the present time. These opinions are held on a more probable than not basis.

1. Mr. McKown has experienced depression and anxiety in response to significant physical injuries, associated medical complications, and disability. His emotional reactions to these stressors are not properly diagnosed as mental disorder (e.g., posttraumatic stress disorder, major depression).

2. There are no psychological barriers to Mr. McKown being gainfully employed, unless psychological factors contribute to his perception of pain, an issue best determined by a pain management program.

3. A review of care and support being provided to Mr. McKown should be conducted by health professionals, with consideration given to current adjustment challenges, long-standing clinical concerns, and strategies that may promote quality of life. This review should consider approaches that include, but are not necessarily limited to: (a) support groups and/or individual counseling that can promote coping and behavioral activation strategies; (b) medications and/or prescription schedules that may improve pain management; (c) non-stimulant medications used in the treatment of adult ADHD (e.g., Strattera); and, (d) counseling that addresses long-standing relationship issues and associated feelings of inadequacy and loneliness.

A follow-up report will be issued if new information alters or supplements current opinions.

Sincerely,

Gerald M. Rosen, Ph.D.
Clinical Psychologist